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**REMARKS**

This communication is in response to the Final Office Action dated August 28, 2006. Claims 1-14 remain pending in this application with claims 1 and 2 being the only independent claims. Reconsideration in view of the amendments and remarks presented herein is respectfully requested.

Claims 1-14 are rejected under 35 U.S.C. §103(a) as obvious over U.S. Patent No. 6,179,820 (Fernfors). Applicants respectfully traverse the prior art rejection of claims 1-14.

**Claim 1**

Independent claim 1, as amended, states "third leg part elastic bodies are disposed along the flap parts at both sides of said main absorbent article body part, wherein the first, second and third leg part elastic plastic bodies intersect with each other five times" (emphasis added). In contrast, Fernfors discloses (Figure 1) that the curved paths 11, 12, 13, 14 intersect with each other only four times, as indicated by points 28, 29, 30, 31. The Examiner acknowledged that Fernfors fails to disclose or suggest this limitation. Nevertheless, the Examiner rejects claim 1 as obvious over Fernfors stating:

"As can be seen in Figs. 1 and 4, the third elastic bodies intersect the waist and leg elastics four times and therefore Fernfors does not teach the waist, leg and third elastics intersect five times. However, an alternate arrangement of the waist, leg and third elastics of Fernfors in which the diamond-shape bound by the elastic portions in the absorbent core area is collapsed such that instead of four intersection points there will be five. Such a configuration still has waist, leg and third elastic that criss-cross in the dorsal and ventral waist areas to intersect one another and the leg elastics while still providing substantially identical functionality. Therefore it would be obvious to one of ordinary skill in the art to modify the positioning of said third elastics so as to have one intersection point with each other and two intersection points each with each leg elastic." (August 28, 2006 Final Office Action: page 3, line 19 through page 4, line 5)(emphasis added)

MPEP §2143.03 states "To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). 'All words in a claim must be considered in judging the patentability of that claim against the prior art.' *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970)." The Examiner has failed to cite a prior art reference that either teaches or

suggests the missing limitation that “the first, second and third leg part elastic plastic bodies intersect with each other five times” instead merely asserting that when collapsed the waist, leg and third elastics in a diamond-shape would produce five intersections. Nothing in Fernfors either discloses or suggest that when the absorbent pant is collapsed five intersections of the elastic portions would be formed. To the contrary, since the elastics are secured to the absorbent pant, when collapsed the number of intersections would remain the same, namely four intersections. Accordingly, Applicants submit that the Examiner has failed to cited either within Fernfors or to a secondary prior art reference teaching “the first, second and third leg part elastic plastic bodies intersect with each other five times” and therefore has not established a *prima facie* case of obviousness and requests that the obviousness rejection under 35 U.S.C. §103(a) be withdrawn.

### Claim 2

Independent claim 2 has been amended to recite that the second leg part elastic bodies have an intermediate part “crossing said crotch part in a direction substantially parallel to the lateral axis”. To the contrary, Fernfors discloses (Figures 1 & 4) only curved paths 11, 12, 13, 14 and thus fails to disclose an intermediate part of the elastic bodies crossing the crotch part in a direction substantially parallel to the central lateral axis X-X.

The Examiner in rejecting this limitation states that “Such a configuration still has waist, leg and third elastic that criss-cross in the dorsal and ventral waist areas to intersect one another and the leg elastics while still providing substantially identical functionality.” (August 28, 2006 Final Office Action: page 3, line 23 through page 4, line 2) The Examiner does not refute Applicant’s position that Fernfors discloses (Figures 1 & 4) curved paths 11, 12, 13, 14 and thus fails to disclose an intermediate part of the elastic bodies crossing the crotch part in a direction substantially parallel to the central lateral axis X-X, as claimed. Once again pursuant to MPEP §2143.03 in establishing a *prima facie* case of obviousness the Examiner must cite some prior art reference that teaches or suggests all the claimed limitations. Therefore, Applicants submit that the Examiner has improperly disregard this claimed limitation by asserting that the same functionality would be provided by the arrangement shown in Fernfors, without citing a prior art reference that either teaches or discloses the claimed limitation.

### **Claims 3 & 8**

The argument below with respect to the rejection of claims 3 and 8 was asserted by Applicants in the previous Amendment but the Examiner neither changed the basis for rejection nor traversed Applicants' arguments. Accordingly, Applicants reassert this same argument and request that in the next communication the Examiner allow the claim, change the basis of the prior art rejection or specifically traverse Applicants' arguments.

Claims 3 and 8 call for the crotch part of the outer layer sheet to be "notched so as to be substantially concave towards the inner sides in the width direction". The Examiner states "As can best be seen in Fig. 3, crotch region 4 is substantially concave toward the inner side of the main absorbent body of pants 1." (Page 3, ll. 21-23 of April 19, 2006 Office Action) Despite the concave appearance of the pants 1 in Figure 3, Fernfors fails to teach "notching" in the crotch region 4 of the outer layer 20, as expressly called for in claims 3 and 8.

Furthermore, claims 3 and 8 also specify that "the third leg part elastic bodies, which are positioned at the flap parts of said main absorbent body part, have at least a portion thereof disposed outward beyond the leg parts at the respective sides of the outer layer sheet" (emphasis added). In addressing this limitation the Examiner states "The portions of paths 11, 12, 13, 14 that extend from the intersection points towards the side edges are angled away from the leg parts of pants 1 and terminate below substantially all of the respective side flap parts in each waist region 2, 3, as can be seen in Figs. 1 and 3. (Claim 4)(Col. 5, lines 18-20)" (Page 3, line 23 through Page 4, line 2 of April 16, 2006 Office Action) Applicants respectfully traverse the Examiner's interpretation of the Fernfors reference as teaching this limitation. In contrast to claims 3 and 8 that call for at least a portion of the third leg part elastic bodies to be disposed outward beyond the leg parts at the respective sides of the outer layer sheet, in Figures 1-4 nothing is shown extending beyond the leg parts at the respective side edges 5, 6 of the outer layer sheet.

### **Claims 4 & 9**

The argument below with respect to the rejection of claims 4 and 9 was asserted by Applicants in the previous Amendment but the Examiner neither changed the basis for rejection

nor traversed Applicants' arguments. Accordingly, Applicants reassert this same argument and request that in the next communication the Examiner allow the claim, change the basis of the prior art rejection or specifically traverse Applicants' arguments.

Dependent claims 4 and 9 state "the third leg part elastic bodies are positioned at least respectively between the vicinities of the positions at which the first leg part elastic bodies and the outer side parts of the flap parts at the respective sides of the main absorbent article body part intersect and the vicinities of the positions at which the second leg part elastic bodies and the outer side parts of the flap parts at the respective sides of the main absorbent article body part intersect."

In addressing this limitation the Examiner states "The portions of paths 11, 12, 13, 14 that extend from the intersection points towards the side edges are angled away from the leg parts of pants 1 and terminate below substantially all of the respective side flap parts in each waist region 2, 3 as can be seen in Figs. 1 and 3. (Claim 4)(Col. 5, lines 18-20)" (Page 3, line 23 through Page 4, line 2 of April 16, 2006 Office Action) Applicants submit that the Examiner's remarks fail to read on the present claimed limitation. In claim 1, the Examiner states that the curves 11, 12, 13, 14 from the point of intersection are analogous to the claimed third leg part elastic bodies. Assuming, *arguendo*, that this interpretation is correct then the limitation found in claims 4 and 9 would require that this portion of the curved paths 11, 12, 13, 14 be positioned between two intersections, namely, (i) a first intersection of the first leg part elastic bodies and the outer side parts of the flap parts at the respective sides of the main absorbent article body, and (ii) a second intersection of the second leg part elastic bodies and the outer side parts of the flap parts at the respective sides of the main absorbent article body part intersect. Fernfors shows (Figures 1 & 3) only a single point of inflection 30, 31 of the curved paths intersecting with each flap part to the respective sides of the absorbent core 9, rather than two such intersections as found in claims 4 and 9.

#### **Claims 5 & 10**

The argument below with respect to the rejection of claims 5 and 10 was asserted by Applicants in the previous Amendment but the Examiner neither changed the basis for rejection nor traversed Applicants' arguments. Accordingly, Applicants reassert this same argument and

request that in the next communication the Examiner allow the claim, change the basis of the prior art rejection or specifically traverse Applicants' arguments.

Dependent claims 5 and 10 state "a pair of three-dimensional gathers, which are erected in the direction of the body of a wearer when the absorbent article body is fitted onto the body of the wearer, are formed in mutually opposing manner at outer side parts at the respective sides that are positioned outwards in the width direction beyond the vicinities of the third leg part elastic bodies of the main absorbent article body part" (emphasis added). The Examiner maintains that "Fernfors teaches that the elastic elements bordering edges 5, 6 are intended during use to exert a contracting force around the user's legs. (Col. 10, lines 56-59)" (Page 4, lines 4-5 of April 6, 2006 Office Action) Fernfors fails to show any gathers outwards in the width direction (towards side edges 5, 6) beyond the vicinities of the third leg part elastic bodies (which the Examiner asserts is analogous to paths 11, 12, 13, 14 from the points of intersection). Referring to the cross-sectional view in Figure 2 no gathering, elastic or cinching is shown outwards in the width direction of the elastic elements 10 (representing from left to right curved paths 13, 12, 14, 11).

#### **Claims 6 & 11**

The argument below with respect to the rejection of claims 6 and 11 was asserted by Applicants in the previous Amendment but the Examiner neither changed the basis for rejection nor traversed Applicant's arguments. Accordingly, Applicants reassert this same argument and request that in the next communication the Examiner allow the claim, change the basis of the prior art rejection or specifically traverse Applicants' arguments.

Dependent claims 6 and 11 provide "each of the first leg part elastic bodies and second leg part elastic bodies is arranged to be lower in tensile strength at the intermediate part, positioned in the direction of crossing said crotch part, than at the one end side and the other end side that are positioned along the leg parts at the respective sides". In rejecting claims 6 and 11, the Examiner states "The nature of the paths 11, 12, 13, 14 formed by elastic elements 10, i.e., their location and points of intersection, result in a lower tensile strength at the point of intersection 28 when compared to the side flaps. The intersection points are defined by the intersection of two elastic elements, which will decrease the tensile strength of the main

absorbent body at those points as opposed to the flaps because the elements 10 are integrated between the outer cover 20 and barrier layer 8 (Col. 9, lines 33-38), where the total occupied by elastic is lower and thus the tensile strength is greater.”

The Examiner’s remarks lack any support or disclosure in the prior art reference itself and thus clearly claims 6 and 11 are not anticipated under 35 U.S.C. §102(b) by Fernfors alone. A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Furthermore, the Examiner’s arguments as best understood by the Applicants is that the tensile strength at the intersections 28 of the curved paths 11, 13 will be less than at the flaps because the elastic 10 is integrated between the outer cover 20 and barrier layer 8. Note that in cross-sectional view shown in Figure 2 all of the elastic elements 10 including those at the flaps are integrated between the outer cover 20 and barrier layer 8. Accordingly, no basis exists in the prior art reference for the Examiner to draw such an inference.

#### **Claims 7 & 12**

The argument below with respect to the rejection of claims 7 and 12 was asserted by Applicants in the previous Amendment but the Examiner neither changed the basis for rejection nor traversed Applicant’s arguments. Accordingly, Applicants reassert this same argument and request that in the next communication the Examiner allow the claim, change the basis of the prior art rejection or specifically traverse Applicants’ arguments.

Dependent claims 7 and 12 state “the outer layer sheet has central elastic bodies, positioned along the longitudinal direction of the absorbent body at the width direction center of the absorbent body that is positioned at the surface side of the outer layer sheet”. In rejecting claims 7 and 12 the Examiner states “Fernfors teaches that elastic elements 10 are also arranged on the inside of core 9 that is centrally located in pants 1. (Col. 10, lines 25-27)” (Page 4, lines 15-16 of April 19, 2006 Office Action) Claims 7 and 12, however, expressly call for the outer layer sheet to have central elastic bodies, not the absorbent core 9. Referring to the cross-sectional view in Figure 2, there clearly is no centrally located elastic elements 10 in outer layer 20, as expressly recited in claims 7 and 12.

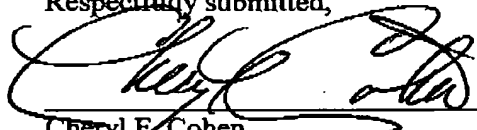
**Claims 13 & 14**

Dependent claims 13 and 14 specify that “the flap part is an impervious sheet”. The Examiner rejects these claims as obvious over Fernfors on the basis that “As can be seen in Fig. 1, pants 1 have flaps that are formed at the peripheral edge parts of barrier layer 8 and extend beyond the laterally opposed side edges of pants 1.” (August 28, 2006 Final Office Action: page 5, lines 4-6)(emphasis added). Applicants respectfully traverse the Examiner’s interpretation of the Fernfors reference. Figure 2 is described in the Brief Description of the Drawings section of the patent as showing “a cross-section of the same absorbent pants along line II – II in FIG. 1, without inner layer 7 removed”. Accordingly, the fluid impervious layer 8 does read on the present claimed “flap part” since it does not extend beyond laterally opposed side edges 5, 6 of pants 1 (as called for in independent claims 1 and 2 from which claims 13 and 14, respectively, depend).

For at least the foregoing reasons Applicants submit that independent claims 1-14 are patentable over the art of record and passage to issuance is requested.

If any additional fees or charges are required at this time in connection with the application, authorization is hereby given to charge our Patent and Trademark Office Deposit Account No. 503462.

Respectfully submitted,



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